

Message

From: Letendre, Daisy [letendre.daisy@epa.gov]
Sent: 8/1/2017 7:37:36 PM
To: Bowman, Liz [Bowman.Liz@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]
CC: Bennett, Tate [Bennett.Tate@epa.gov]
Subject: RE: Background/TPs for Indiana and Colorado
Attachments: indiana and colorado - bckgrnd and tps.docx

How are we doing on this, anything y'all need from me?

From: Bowman, Liz
Sent: Tuesday, August 1, 2017 1:46 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Letendre, Daisy <letendre.daisy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>
Subject: Re: Background/TPs for Indiana and Colorado

I forgot you aren't OPA anymore! (Sad!)...since it's a speech, I think it makes sense for you to take a stab at talking points for him, but we will take over once we get our speechwriter in place. I can review if you need help

Sent from my iPhone

On Aug 1, 2017, at 1:44 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

The plan is that she sends us the background and then OPA turns them into talking points and messaging.

Sent from my iPhone

On Aug 1, 2017, at 1:37 PM, Ferguson, Lincoln <ferguson.lincoln@epa.gov> wrote:

Thank you daisy.

Can you work with Liz to put some of these in talking point form and then we will have the background version as well as his notecards.

We don't need much- just a few bullets for each topic.

Sent from my iPhone

On Aug 1, 2017, at 12:45 PM, Letendre, Daisy <letendre.daisy@epa.gov> wrote:

WOTUS Indiana

- WOTUS affects farmers around the country, especially soybean and corn farmers in Indiana which ranks 10th nationally in total agricultural production and in the top five for crop production, because to the abundance of corn and soybeans.^[1]
- Farming in Indiana has an economic impact of \$11.2B/year ^[2]

^[1] Indiana State Dept of Agriculture

^[2] USDA

WOTUS Colorado

- Agriculture in Colorado contributes more than \$40 billion to the state's economy each year and provides more than 173,000 jobs^[3] – the 2015 WOTUS rule put these jobs and the state's economy at risk.
- There are 36,180 farms in Colorado
- Leading agricultural products in Colorado are cattle and calves, corn, wheat, hay and dairy

From: Ferguson, Lincoln
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Cc: Bennett, Tate <Bennett.Tate@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Re: Background/TPs for Indiana and Colorado

Daisy- thanks for these. I will work into taking points.

Can we also get the state-specific points like you prepared for Utah/Minnesota etc

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On Jul 31, 2017, at 6:22 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Ah good, that works. Thanks for clarifying.

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I don't leave until Wednesday morning

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^[3] National Agricultural Statistics Service

On Jul 31, 2017, at 5:57 PM, Bowman, Liz
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Thanks, Daisy. This is okay for background, but these aren't really talking points. Let's discuss first thing tomorrow – when are you free? Lincoln, when are you leaving?

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Lincoln and Liz – Per RJ's request at this morning's meeting attached is background info and talking points on WOTUS, Dicamba, East Chicago, Superfund and Gold King.

Please review and let me know if you need any additional info. Some of the background sections are wonky so feel free to alter for SP but I wanted to have one copy circulated with background included as it can be helpful for staff to have on hand when traveling.

Indiana/Colorado Background

WOTUS

- On July, step 1 of the WOTUS rescind published in the federal register. The comment period closes August 19. We've received several petitions to extend this deadline but have not replied to any yet.
- On June 27, EPA with Department of the Army and Army Corps of Engineers proposed a rule to rescind the 2015 WOTUS rule and re-codify the regulatory text that existed prior and reinstate the status quo
- This was step one of a two-step process
 - The next step is a rulemaking to revise the definition of Waters of the U.S. and the agencies have also begun deliberations and outreach on the second step rulemaking involving a re-evaluation and revision of the definition of "waters of the United States"
 - Both of these actions are in accordance with President Trump's EO
- Reviewing the WOTUS rule is a top priority of the administration
 - In 2015 the Obama Administration reinterpreted what is considered a "navigable water" under the Clean Water Act (CWA)
 - the definition was expanded so broadly that it included waters like drainage ditches, puddles, wetlands, water features on golf courses and runoff.
 - The 2015 rule created so much regulatory uncertainty that more than half the states (27) challenged EPA in court on the basis that the rule violated the Constitution, the Clean Water Act and the Administrative Procedure Act
 - The 2015 WOTUS definition would have had adverse economic impacts in many small and rural communities
 - Cost and burden to obtaining permits build fences, spray fertilizer, dig ditches, etc
- As written, the Clean Water Act does not define what "Waters of the U.S." means, EPA and the Department of the Army do
- While the Obama Administration had the ability to redefine WOTUS, they went too far and ultimately the courts found the definition to be on legally questionable ground.
 - The 2015 rule was stayed by 6th Circuit Court of Appeals as a result
- EPA and the Administration are committed to keeping waters pollution free, promoting economic growth and minimizing regulatory uncertainty for Congress, state, local and tribal government as well as farmers, ranchers and property owners.

WOTUS Indiana

- WOTUS affects farmers around the country, especially soybean and corn farmers in Indiana which ranks 10th nationally in total agricultural production and in the top five for crop production, because to the abundance of corn and soybeans.¹
- Farming in Indiana has an economic impact of \$11.2B/year ²

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- Agriculture in Colorado contributes more than \$40 billion to the state's economy each year and provides more than 173,000 jobs³ – the 2015 WOTUS rule put these jobs and the state's economy at risk.
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Dicamba

¹ Indiana State Dept of Agriculture

² USDA

³ National Agricultural Statistics Service

- Dicamba is a selective herbicide. It is used on a wide variety of agricultural crops as well as non-crop sites, such as rangelands, golf courses, and residential areas. It is a synthetic auxin, which mimics hormones found naturally in the plants, and controls many broadleaf weeds and woody plants.
- The DT trait in soybean and cotton allows new dicamba formulations to be applied substantially later in the growing season without causing damage to the crop. The most common new products (lower volatility) used today are known as Xtend, VaporGrip, and Engenia. All were registered in late 2016 and early 2017.
 - The new registrations are set to automatically expire two years after issuance (November 9, 2018) unless EPA determines before that date that off-site incidents are not occurring at unacceptable frequencies or levels.
- Reports of off-target crop damage began June 13, 2017. We're trying to determine if Dicamba is the true cause of these incidents.
- Initial reports came from Arkansas, Missouri, Mississippi, and Tennessee, but recent reports have been expanding into more northern states (Iowa, Nebraska, and Kansas) as growing/use season proceeds.
 - So far, 157 reports have come in for Missouri, and well over 600 for Arkansas.
- In Missouri alone, damage has so far been reported on nearly 64,000 acres of soybeans, as well as on tomatoes, melons, grapes, peaches, pumpkins, organic crops, and residential gardens/ornamentals.
- Arkansas has banned Dicamba for the rest of the season using emergency rule authority
- Missouri, used FIFRA stop sale authority to ban Dicamba, but is now working with EPA to bring use back, with restrictions under FIFRA 24(c) authority.
- Tennessee has used emergency rule authority to restrict Dicamba uses
- Kansas issued a press release telling growers to exercise caution, but does not intend to ban use.
- Under section 24 of FIFRA, states may regulate pesticides more stringently than EPA provided that the states do not impose labeling or packaging requirements.
- Under FIFRA, any changes to the allowable conditions of use of a pesticide must generally be done through amending or canceling the relevant registrations
- Dialogue is continuing between the states and EPA and registrants and we are evaluating the appropriate course of action for each state and determining if federal action is needed.
- OICA did a compliance advisory reiterating the label rules for Dicamba

East Chicago

- The remediation of lead from the yards in Zones 2 and 3 continues. We will complete as many yards as possible during the construction season. The final yard remediation will be completed in 2018.
- Zone 1 is the site of the low income housing units as well as the Carrie Gosush School. While we began the remediation in Zone 1 by first working on the interior of the housing complex, the mayor of East Chicago then decided to close the housing complex.
 - It was a great disservice to the residents as they were mandatorily disbursed all over many different areas. EPA would have had the entire Zone 1 remediated by now had we not been deterred by the Mayor's action.
 - Now the East Chicago Housing Authority has decided to raze the entire complex. This will complicate matters even further.
 - EPA will not be able to remediate Zone 1 until the demolition is finished and will also have to monitor all of the tearing down and hauling away of the housing complex material. It is an unnecessary additional burden for East Chicago.
- EPA also received a petition from many concerned citizen groups asking EPA to invoke our authority under the Safe Drinking Water Act to basically take a number of steps to provide drinking water enhancement to the citizens.
 - This is the primary responsibility of the state. Our investigation reflects that the state has basically done everything that we were asked to do.
 - We have decided to hold the request in abeyance and are notifying the petitioners basically that their request is made moot but that we will continue to monitor.
- An additional issue on which we are engaged is the disposal of dredging material containing PCBs in a Corps of Engineers Confined Disposal Facility (CDF) in East Chicago.

- The Corps has been dredging the river for some time. In around 2012 a CDF was established on 162 acres of an old refinery site in East Chicago.
 - This was at one time a welcome thing – the CDF is quite elaborate in its set up and monitoring. It has been used continuously since being established.
 - Now, the Corps wants to place dredged material containing PCBs with concentrations of more than 50 ppm in the CDF. To do so, they must have our approval and the state's approval. This application has created a furor. I have instructed Region 7 not to approve the application. The state agrees and believes they have an alternative that will work. The wrong thing about this is that in my simple opinion the Corps is really entitled to the granting of the application. Seemingly they have done everything correctly. This is still a work in progress.
- On August 7, the Governor and Secretary Carson are touring the site. I am trying to be in attendance as well as I think we will receive blame if we are not there.

Superfund

- Administrator Pruitt introduced the Superfund Task Force Report on July 25.
- Immediately thirteen directives were given by the Administrator to be immediately implemented.
- Additionally, we are charged with execution thereof.
- On August 1, EPA will hold a meeting of the captains and the recommendation lead personnel. That will be our embarkation point for the execution of the remaining recommendations.

Gold King

- The previous administration failed those who suffered losses as a result of the Gold King Mine release. A new review is paramount to ensure that those who have in fact suffered losses have a fair opportunity to receive assistance.
- When I was appointed Administrator, I committed to review a decision by the previous administration regarding the Gold King Mine incident that left so many impacted people without any support or help from the federal government.
- In January 2017, EPA denied 79 administrative claims filed by farmers, ranchers, homeowners, businesses, employees, state and local governments, as well as other individuals seeking damages in connection with the Gold King Mine release.
- In February 2017, the State of Utah filed an administrative claim seeking \$1.9 billion. Utah's claim is still pending, as are all administrative claims that have been filed after Utah's.
- On July 5, 2017, EPA mailed letters to all claimants whose administrative claims had been denied (except for New Mexico and the Navajo Nation), notifying them that the Agency was reconsidering their claims and requesting that they submit additional documentation. We have begun receiving additional documentation and questions from some claimants. In addition, a number of the letters were returned as undeliverable.
- On July 6, 2017, EPA received 59 new administrative tort claims from the law firm Hueston Hennigan filed on behalf of individual members of the Navajo Nation. (Hueston Hennigan is also representing the Navajo Nation as a whole in the district court litigation.) In addition, the firm submitted three requests for reconsideration on behalf of claimants who were not previously represented and whose administrative claims had been denied.
- There are currently 69 administrative tort claims pending that have not received an initial determination, including Utah's. An additional 77 administrative tort claims are under reconsideration. (That number includes some claimants who filed lawsuits around the same time of the reconsideration, and we are uncertain whether those claims may still be reconsidered given the timing of the filing of the suits.)
- **Looking ahead:**
 - EPA has six months (until December) to act on claims under reconsideration. If EPA does not act on a claim, it may be deemed "constructively denied" and the claimant may choose to file suit. Ex. 5 - Attorney-Client Privilege
 - In general, the statute of limitations to file administrative tort claims with the Agency runs on **August 5, 2017**. Ex. 5 - Attorney-Client Privilege

CCR

- The CCR rule is estimated to cost power plants between \$500 and \$745 million/year

- We've developed draft guidance for the states on CCR that is currently under OMB review.
- Most of the CCR rule's compliance deadlines have already gone into effect, but the ones that have not (including groundwater monitoring) are pretty significant and I understand why you want to change them.
- I appreciate the concern that you don't want companies making investment decisions to prematurely close power plants if that can be avoided before state permit programs get up and running.
- I agree that regulation of coal ash is best left up to the states. We have been encouraging states not wait for EPA to finalize guidance and to work with us now to get the approval process underway.
- EPA is already working on a proposed rule to be released for comment this fall that would fix a number of the problems that have been identified with the rule. Changing the CCR rule, including the compliance deadlines, would need to meet the statutory requirements and go through notice and comment rulemaking.
- We are carefully reviewing our authority to extend the deadlines and want to make sure any changes to the CCR rule are durable and not going to be struck down by the court, which could put power plants and states in an even worse off place.

Message

From: Bennett, Tate [Bennett.Tate@epa.gov]
Sent: 8/7/2017 12:53:04 AM
To: Hupp, Millan [hupp.millan@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]
Subject: Fwd: Memos for next week attached
Attachments: NorthDakotaMemosWOTUS.docx; ATT00001.htm

These are the latest from my team for binder. They are currently being revised.

Sent from my iPhone

Begin forwarded message:

From: "Cory, Preston (Katherine)" <Cory.Preston@epa.gov>
Date: August 4, 2017 at 12:41:10 PM EDT
To: "Bennett, Tate" <Bennett.Tate@epa.gov>, "Letendre, Daisy" <letendre.daisy@epa.gov>, "McMurray, Forrest" <mcmurray.forrest@epa.gov>
Cc: "Lyons, Troy" <lyons.troy@epa.gov>, "Morris, Madeline" <morris.madeline@epa.gov>
Subject: Memos for next week attached

Daisy- I could not find much on RFS in relation to TX and ND, if you could fill in a sentence or so on the topline summary for those stops, I would really appreciate it!

I don't have much more info on Dallas- is there an updated line-by-line? Let me know what else needs updates

Best,
Preston

K. Preston Cory
Special Assistant
Office of the Administrator, Congressional and Intergovernmental Relations
U.S. Environmental Protection Agency
O: (202) 564-1747
C: (202) 579-4281

TO: Administrator Pruitt
FROM: OCIR, OPA
CC: Ryan Jackson
RE: WOTUS Travel
DATE: August 8, 2017
LOCATION: Des Moines, Iowa

10:00 AM WOTUS Roundtable with Principles

Topline summary of issues:

RFS: Gov. Reynolds testified on behalf of the ethanol industry last week at the RFS Public Hearing in Washington, D.C. Reynolds asked for an increase in the 2019 biofuel level from 2.1 billion to 2.75 billion gallons. Iowa accounts for 16 percent of U.S. biodiesel production.

WOTUS: Gov. Reynolds, Lt. Gov. Adam Gregg, and Buchanan County, Iowa submitted comments during the initial comment period

Principle Attendees:



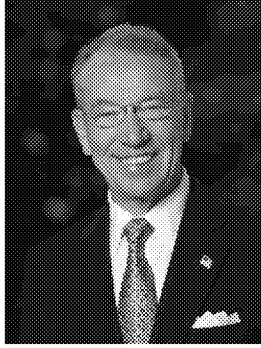
Gov. Kim Reynolds

In addition to meeting her at the Midwestern Governors' Association event and East Chicago, she visited EPA HQ and helped run the WOTUS call with attorneys general in July.



Sen. Joni Ernst

Senator Ernst is the junior U.S. Senator from Iowa. She was elected in 2014 following a 23-year stint in the military. She serves on the following committees: Armed Services, Agriculture, Nutrition and Forestry, EPW, and Small Business and Entrepreneurship. She spoke at the RFS public hearing on August 1, 2017. While she praised EPA's proposed 2016 volume requirement for conventional ethanol, she is displeased by the lowered number for advanced biofuels.



Sen. Chuck Grassley

Senator Grassley is the senior U.S. Senator from Iowa and Chairman of the Senate Judiciary Committee. He is also a leader in the development of renewable energy and staunch proponent of RFS about which you spoke prior to your confirmation hearing in February.



Sec. of Agriculture Bill Northey

Elected in 2006, and again in 2010 and 2014, Secretary Northey has championed renewable energy throughout his tenure. He chaired the National Corn Growers Association from 1996-97.

Others: Iowa Department of Agriculture and Land Stewardship, Iowa Department of Natural Resources, Iowa Farm Bureau, Agribusiness Association of Iowa, Iowa Cattlemen Association, Iowa Corn Growers Association, Iowa Pork Producers, Iowa Institute of Cooperatives, Iowa Soybean Association

POC: Austin Jacobs 515-725-3513 austin.jacobs@iowa.gov

TO: Administrator Pruitt
FROM: OCIR, OPA
CC: Ryan Jackson
RE: WOTUS Travel
DATE: August 9, 2017
LOCATION: Fargo/ Grand Forks, North Dakota

10:45 AM WOTUS Roundtable at NDSU College of Agriculture

Topline summary of issues:

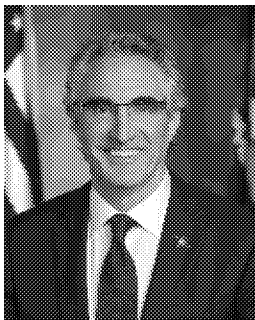
WOTUS: Rep. Kramer and Senators Hoeven and Heitkamp have been staunch advocates of repealing the 2015 WOTUS rule.

RFS:

CPP: North Dakota was one of 27 states that challenged the 2015 CPP. As of February 2016, coal accounted for 80 percent of North Dakota's electricity and 13,000 jobs.

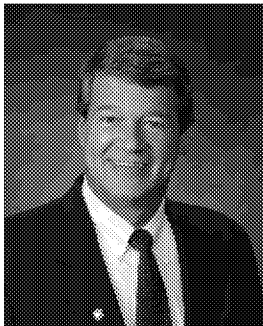
Clean Coal tech research: Rep. Kramer and Sen. Hoven have introduced legislation to align IRS guidelines with EPA regulations on carbon sequestration. This would ensure that carbon dioxide sequestration becomes more commercially available.

Principle Attendees:



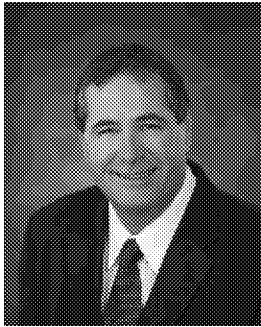
Governor Doug Burgum

Governor Burgum attended the WGA event at EPA HQ in February. He is concerned with managing CO₂ to our benefit, using technology to improve pipelines, and generally working to develop new technology in the energy sector. He recently attended an oil industry conference advocating for the doubling of production and the elimination of spills. Although he did not send in individual comments on WOTUS, North Dakota is a member of WGA, which sent in a comment letter. The state of North Dakota is in the midst of a drought disaster with almost 46 percent of the state experiencing "extreme or exceptional drought."



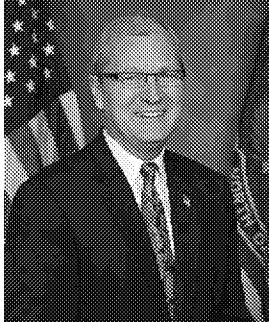
AG Wayne Stenehjem

North Dakota first elected Attorney General Stenehjem in 2001. In a press release, he applauded the motion to withdraw the WOTUS rule. He has been involved with litigation since the publishing of the 2015 WOTUS rule. In a June press release, General Stenehjem stated that withdrawing the rule is an "important step forward in the process of restoring the States' control over their own waters."



Commissioner Goehring operates a no-till farm where he and his son raise corn, soybeans, wheat, and barley. He is a former director of the National Soybean Board

Ag Commissioner Doug Goehring



Rep. Kevin Cramer

Rep. Cramer is the At-large congressman for North Dakota. He serves on the House Energy and Commerce Committee and served on the House Steering Committee in 2016, which determines all committee assignments and chairmanships. As an energy adviser to Trump during the campaign, he pushed for the review of the Clean Water Act.



Sen. John Hoeven

Senator Hoeven is the senior U.S. Senator for North Dakota, elected in 2011. He has lead efforts in developing a comprehensive, all-the-above national energy plan that includes both tradition and non-traditional resources. He is a member of the Senate Committee on Agriculture, Nutrition, and Forestry. He led legislation in 2016 to defund the EPA's WOTUS rule.



Sen. Heidi Heitkamp

Senator Hietkamp is the junior U.S. Senator for North Dakota, elected in 2013. She served as director of Dakota Gasification synfuels plant and since her election to the Senate, has fought to lift the 40-year ban on the export of U.S. crude oil. Heitkamp is a member of the Senate Committee on Agriculture, Nutrition, and Forestry. She previously served as the AG of North Dakota and as North Dakota's Tax Commissioner.

Others: Sugar Beet Rep, NDSU President, NDSU Ag representative, State water engineer (speak to golf courses, construction development, etc), ND Farm Bureau, ND Farmers' Union, Stockman's Association, AG Stenehjem's invite, House Ag chair, Senate Ag chair, Lt. Gov,

2:45 PM Tour and Roundtable at University of North Dakota's Energy and Environmental Research Center

Attendees: Sen. Heitkamp, PSC Rep (Infrastructure), UND President, EERC Rep, Ron Ness- Petroleum Council, Tyler Hammen- Lignite Energy Council, Mac McCleanan- Project Tundra, Senate ENR chair, House ENR chair, Tribal energy rep (likely MHA Chair Mark Fox

TO: Administrator Pruitt
FROM: OCIR, OPA
CC: Ryan Jackson
RE: WOTUS Travel
DATE: August 10, 2017
LOCATION: Dallas, TX

Topline summary of issues:

RFS: ??

Corporate Average Fuel Economy (CAFE) Standards: Under current Obama administration regulations, the fuel economy target for 2021 is 41 MPG and is 50 MPG by 2025. The Alliance of Automobile Manufacturers, which represents Toyota, testified in front of the House Energy and Commerce Committee in 2016 on the burden of Obama era CAFE standards

HOLD Meeting with Texas Department of Environmental Quality

Attendees: ??

11:30 AM Tour of Toyota

Attendees: ??

Message

From: Ferguson, Lincoln [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=08CD7F82606244DE96B61B96681C46DE-FERGUSON, L]
Sent: 8/1/2017 10:07:47 PM
To: Graham, Amy [graham.amy@epa.gov]
Subject: RE: Background/TPs for Indiana and Colorado

Yikes. Thanks for catching these. I'll update – what's your ETA on the media briefings?

From: Graham, Amy
Sent: Tuesday, August 1, 2017 6:07 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: RE: Background/TPs for Indiana and Colorado

Thanks, I'm plugging some of these into the press briefing, along with talkers about the state action tour. One thing I noticed is that the bullets for Superfund look incomplete/confusing:

Superfund

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Sent: 10/2/2017 8:14:47 PM
To: Hupp, Millan [hupp.millan@epa.gov]
Subject: FW: Memo AZ Manufactuers

Sorry! Thanks for the other info. Wasn't sure when the lunch started.

From: Hupp, Millan
Sent: Monday, October 2, 2017 12:29 PM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Cc: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>
Subject: RE: Memo AZ Manufactuers

We are set for the 9AM with the Governor at the Capitol and the 1030 roundtable back at the Biltmore. She is sending over the attendee list now. Should be the following...

Steve Regis	CalPortland
Charles Spell	APS
Steve Trussell	Arizona Rock Products Association
Kevin Lang	Southwest Gas
Glenn Hamer	Arizona Chamber
Dawn Grove	Karsten Manufacturing
Steve Macias	Pivot Manufacturing
TBD	Resolution Copper
TBD	SRP

Millan Hupp
Director of Scheduling and Advance
Office of the Administrator
Cell: 202.380.7561 Email: hupp.millan@epa.gov

From: Bennett, Tate
Sent: Monday, October 2, 2017 12:10 PM
To: Hupp, Millan <hupp.millan@epa.gov>
Cc: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>
Subject: Memo AZ Manufactuers

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Did you get any info from your 11 AM phone call? Anything to add r.e. timing of that event/ attendees to this memo? I have highlighted the area that needs your help. Also, Preston is providing background on the governor.

TO: Administrator Pruitt
FROM: Office of Public Engagement
DATE: Friday, October 6, 2017

RE: Meeting with Governor
Ducey _____

Meeting Attendees—

Misael Cabrera – ADEQ Director (Henry Darwin’s successor)
Hunter Moore – Natural Resources Policy Advisor for the Governor
Richard Bark – Freeport McMoran & Chair of Environment Committee at AZ Chamber
Steve Trussel – AZ Rock Products Association

Agenda—

- 9:00 – 9:15 Welcome and introductions
- 9:15 – 9:30 Coronado Generating Station SIP approval, replacing Obama-era FIP
- Remarks from Governor Ducey thanking Administrator for SIP approval
 - Remarks from SRP echoing the same gratitude
 - Remarks from Administrator Pruitt
 - (Communications staff from the Governor’s office will be there to take video – no external media. They’ll issue a press release.)
- 9:30 – 9:45 Governor “asks” and discussion on other cooperative federalism topics
- Help us return more responsibility to the States: CWA 404 delegation, UIC delegation, CCR
 - Help AZ by withdrawing the CERCLA 108(b) hard-rock mining rule
 - Suggested approach on WOTUS – EPA to develop simple, clear definition and set minimum standard. Arid states like AZ will work with stakeholders to develop local programs that cover gaps for ephemerals.
 - Help AZ with Ozone

Background—

Recently signed SIP for Cornado Generating Station (full memo attached, brief background below)— On September 28, EPA signed a Federal Register notice approving the Coronado SIP Revision and withdrawing portions of the Arizona Regional Haze FIP that apply to Coronado.

In 2011, the Arizona Department of Environmental Quality (ADEQ) submitted a regional haze SIP that included a BART (best available retrofit technology) analysis and determination for Coronado Units 1 and 2. In 2012, the EPA took final action disapproving the NOx BART determination for Coronado based on significant flaws in the SIP. In the same action, the EPA promulgated a FIP for Coronado establishing NOx emission limitations achievable with selective catalytic reduction (SCR) with a compliance deadline of December 5, 2017. In response to a petition by SRP the EPA revised NOx emissions limits for the facility on April 13, 2016. On December 15, 2016, ADEQ submitted a SIP revision that incorporates an alternative for BART for Coronado (“Coronado SIP Revision”). ADEQ’s analysis establishes that the Coronado BART alternative will result in greater reasonable progress towards natural visibility conditions than the BART control strategy in the current SIP and FIP (i.e. it is “better than BART”).

Update from Henry on Permitting and Streamlining:

- Creating an inventory (for the first time!) of all the permits EPA issues and how long it takes to issue them. Also creating an inventory of the state-issued permits EPA is required by law to review and how long our review takes.
- Will prioritize the list of permits by: those issued the most, take the longest, and have the biggest impact on the economy.

- Will perform process improvement events by the first of the calendar year on the prioritized permits with the goal of reducing the time to issue by at least 50% (interviewing consultants on contract right now to see which are capable).
- Working with states through Cooperative Federalism 2.0 to identify opportunities for reducing the amount of time for the issuance of permits EPA must review – on a voluntary basis.
- Working with other federal agencies to plan big multi-agency processes improvement event for NEPA - to meet the President’s expectation that the NEPA process be reduced to less than 2 years. This is in addition to the policy changes that are being considered to streamline the NEPA process.

WOTUS in Arizona— * their focus is seasonal and perineal waters *****

Step One

- On June 27th, the agencies signed the step one proposed rule and it was published in the Federal Register on July 27th. The public comment period closed on September 27th. **We received [over 200,000] comments and are eager to review them.**
- The proposed rule is an interim step that would re-codify the regulatory text that existed prior to 2015, providing regulatory continuity and certainty pending a forthcoming second rulemaking in which the agencies will revise the definition of “waters of the United States” in accordance with the Executive Order.
- To be clear, when final, this action would not change current practice with respect to the how the definition applies, which is consistent with Supreme Court decisions, agency guidance, and longstanding practice, given the current court stay.

Step Two

- In addition to step one, the agencies have also begun working on the step two rulemaking to revise the definition of “waters of the U.S.” **This spring the agencies initiated formal consultations with state and local governments and with tribes and we are now in the process of reviewing and analyzing about 200 letters received.**
 - Some of the key themes we heard from states were an interest in capturing regional differences in the revised definition, including exclusions, and ensuring that any new regulation be very clear.
 - Most tribes urged the agencies to protect waters broadly.
 - The agencies will continue to engage with states and tribal governments as the step 2 rulemaking process continues.
- There has been a lot of interest in the feedback we have received as part of our consultations. EPA recently posted the letters to our WOTUS website.
- The EPA and Department of Army are holding listening sessions to give stakeholders an opportunity to provide pre-proposal recommendations on a revised definition of “waters of the United States.” The agencies will host nine two-hour teleconferences that will be tailored to specific sectors, plus one that will be geared to the general public. The agencies will also hold one in-person session for small entities, such as small businesses, small governments, and small associations.

- You may be especially interested in the one for Industry – that conference call/webinar will be held on October 24 from 1:00PM to 3:00PM EDT.
- You can find a link on our website. The agencies ask that this information be submitted on or before November 28, 2017.
- Information gathered through these stakeholder sessions, in addition to the feedback the agencies are hearing through ongoing outreach to state and tribal governments, will help inform the step two rulemaking, which would revise the definition of “waters of the United States” under the Clean Water Act.
- In addition to pre-proposal outreach, the second step rulemaking to revise the definition of WOTUS will also include opportunity for public notice and comment.

Clean Power Plan—

- EPA is ending the “War on Coal.” Following the President’s March 2017 Energy Independence Executive Order, Administrator Pruitt signed three notices to review, and possibly rescind major economically significant rules, including the so-called Clean Power Plan **that threatens over 125,000 U.S. jobs. The proposed repeal is currently at OMB and we expect it to be proposed by the end of the year.**
- The Clean Power Plan (CPP) has serious legal and policy flaws. For years, energy producing states have argued that this plan is an overreach by EPA, interfering with the states’ sovereign rights. As directed by this Executive Order, EPA will review the CPP to ensure that the agency is abiding by the Clean Air Act and respecting the rule of law.
- A bipartisan majority in the 114th Congress rejected the CPP, which was promulgated under Section 111 of the Clean Air Act.
- In February 2016, the Supreme Court took the unprecedented step to stay the implementation of the CPP. The stay is for good reason as the CPP was being challenged by over 150 entities including 28 states, 24 trade associations, 37 rural electric co-ops, and 3 labor unions.
- When it comes to environmental protection, we’ve got a lot to celebrate. According to EPA, since 1980 there’s been a 65% reduction in the 6 principle pollutants under the Clean Air Act’s National Ambient Air Quality Standards program. This has occurred at the same time more Americans have used more energy and driven more cars, more miles.
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Elizabeth Tate Bennett
 Associate Administrator for Public Engagement & Environmental Education
 Office of the Administrator
 U.S. Environmental Protection Agency

(202) 564-1460

Bennett.Tate@epa.gov

Message

From: Bennett, Tate [Bennett.Tate@epa.gov]
Sent: 10/2/2017 4:43:33 PM
To: Hupp, Millan [hupp.millan@epa.gov]
Subject: RE: Memo AZ Manufacturers

Thanks! Do you know who will be introducing him?

From: Hupp, Millan
Sent: Monday, October 2, 2017 12:29 PM
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 Office of the Administrator
 U.S. Environmental Protection Agency

(202) 564-1460

Bennett.Tate@epa.gov

Message

From: Hupp, Millan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=92CAC7B684B64F90953B753A01BEE0D5-HUPP, MILLA]
Sent: 5/7/2018 9:07:05 PM
To: Seabaugh, Catherine [seabaugh.catherine@epa.gov]
Subject: Fwd: Industrial Minerals Association Memo
Attachments: Industrial Minerals Association.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Gordon, Stephen" <gordon.stephen@epa.gov>
Date: May 7, 2018 at 4:54:02 PM EDT
To: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Hupp, Millan" <hupp.millan@epa.gov>, "McMurray, Forrest" <mcmurray.forrest@epa.gov>, "Kundinger, Kelly" <kundinger.kelly@epa.gov>, "Beach, Christopher" <beach.christopher@epa.gov>, "Ferguson, Lincoln" <ferguson.lincoln@epa.gov>, "Ford, Hayley" <ford.hayley@epa.gov>
Subject: Industrial Minerals Association Memo

All,

Please see the attached memo for Administrator Pruitt's speaking engagement tomorrow at the Industrial Minerals Association's Annual Spring Meeting.

Thanks so much.

-Stephen

Stephen L. Gordon Jr.
Deputy Director for Public Engagement
Office of the Administrator
U.S. Environmental Protection Agency
(202) 564-1301
Gordon.Stephen@epa.gov

INDUSTRIAL MINERALS ASSOCIATION SPEAKING ENGAGEMENT MEMO

TO: RYAN JACKSON
FROM: OPE
SUBJECT: INDUSTRIAL MINERALS ASSOCIATION
DATE: MAY 8, 2018

Attire: Business

Participants:
Administrator Pruitt

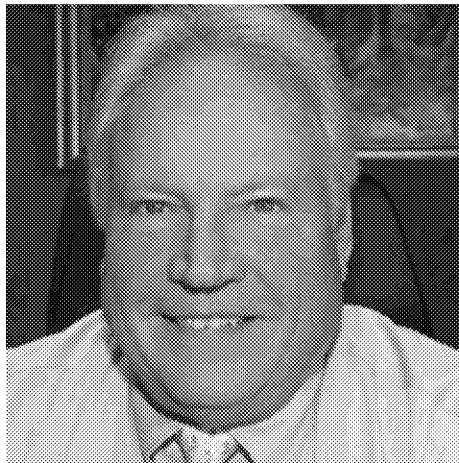
Agenda

Tuesday, May 8

3:15pm EST **Speaking Engagement at The Industrial Minerals Association's Annual Spring Meeting**

Location: Renaissance Hotel (999 9th St NW, Washington, DC, 20001)

Note: Randall Johnson (President at R.T. Vanderbilt Holding Company, Inc.) will be introducing you.



Bio: Mr. Randall L. Johnson has been the President of R.T. Vanderbilt Holding Company, Inc. since February 2016. Mr. Johnson served as Vice President and Global Business Manager of Minerals Business of R T Vanderbilt Company Inc. since 2001 until February 2016. Mr. Johnson served from 1973 to 1979 in Ferro Corp: From 1973 to 74, he was Ceramic Engineer in clayware lab, then technical field-sales rep 1974-79. 1979 - 1984 Sales Representative with Cyprus Minerals - division of Amoco Oil Corp. In

1984, he joined R. T. Vanderbilt Company, Inc. as Sales Manager - Ceramics Department. In 1992, he was appointed Manager - Minerals Group and in July 1, 1998 as Vice President - Mineral Sales. He has been a Director of R.T. Vanderbilt Holding Company, Inc. since December 2016. He Graduated from Alfred University - College of Ceramics in 1972 with B.S. degree in Ceramics Engineering.

Background:

The Industrial Minerals Association - North America (IMA-NA) is the representative voice of companies which extract and process a vital and beneficial group of raw materials known as industrial minerals. Industrial minerals are the ingredients for many of the products used in everyday life, and our companies and the people they employ are proud of their industry and the socially responsible methods they use to deliver these beneficial resources.

IMA-NA represents ball clay, barite, bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, kaolin, magnesia, soda ash, talc and wollastonite.

Message

From: Letendre, Daisy [letendre.daisy@epa.gov]
Sent: 8/1/2017 12:03:43 AM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Fwd: Background/TPs for Indiana and Colorado
Attachments: indiana and colorado - bckgrnd and tps.docx; ATT00001.htm

FYI - Lincoln is reviewing

Sent from my iPhone

Begin forwarded message:

From: "Letendre, Daisy" <letendre.daisy@epa.gov>
Date: July 31, 2017 at 5:45:46 PM EDT
To: "Ferguson, Lincoln" <ferguson.lincoln@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>
Subject: **Background/TPs for Indiana and Colorado**

Lincoln and Liz – Per RJ's request at this morning's meeting attached is background info and talking points on WOTUS, Dicamba, East Chicago, Superfund and Gold King.

Please review and let me know if you need any additional info. Some of the background sections are wonky so feel free to alter for SP but I wanted to have one copy circulated with background included as it can be helpful for staff to have on hand when traveling.

Indiana/Colorado Background

WOTUS

- On July, step 1 of the WOTUS rescind published in the federal register. The comment period closes August 19. We've received several petitions to extend this deadline but have not replied to any yet.
- On June 27, EPA with Department of the Army and Army Corps of Engineers proposed a rule to rescind the 2015 WOTUS rule and re-codify the regulatory text that existed prior and reinstate the status quo
- This was step one of a two-step process
 - The next step is a rulemaking to revise the definition of Waters of the U.S. and the agencies have also begun deliberations and outreach on the second step rulemaking involving a re-evaluation and revision of the definition of "waters of the United States"
 - Both of these actions are in accordance with President Trump's EO
- Reviewing the WOTUS rule is a top priority of the administration
 - In 2015 the Obama Administration reinterpreted what is considered a "navigable water" under the Clean Water Act (CWA)
 - the definition was expanded so broadly that it included waters like drainage ditches, puddles, wetlands, water features on golf courses and runoff.
 - The 2015 rule created so much regulatory uncertainty that more than half the states (27) challenged EPA in court on the basis that the rule violated the Constitution, the Clean Water Act and the Administrative Procedure Act
 - The 2015 WOTUS definition would have had adverse economic impacts in many small and rural communities
 - Cost and burden to obtaining permits build fences, spray fertilizer, dig ditches, etc
- As written, the Clean Water Act does not define what "Waters of the U.S." means, EPA and the Department of the Army do
- While the Obama Administration had the ability to redefine WOTUS, they went too far and ultimately the courts found the definition to be on legally questionable ground.
 - The 2015 rule was stayed by 6th Circuit Court of Appeals as a result
- EPA and the Administration are committed to keeping waters pollution free, promoting economic growth and minimizing regulatory uncertainty for Congress, state, local and tribal government as well as farmers, ranchers and property owners.

Dicamba

- Dicamba is a selective herbicide. It is used on a wide variety of agricultural crops as well as non-crop sites, such as rangelands, golf courses, and residential areas. It is a synthetic auxin, which mimics hormones found naturally in the plants, and controls many broadleaf weeds and woody plants.
- The DT trait in soybean and cotton allows new dicamba formulations to be applied substantially later in the growing season without causing damage to the crop. The most common new products (lower volatility) used today are known as Xtend, VaporGrip, and Engenia. All were registered in late 2016 and early 2017.
 - The new registrations are set to automatically expire two years after issuance (November 9, 2018) unless EPA determines before that date that off-site incidents are not occurring at unacceptable frequencies or levels.
- Reports of off-target crop damage began June 13, 2017. We're trying to determine if Dicamba is the true cause of these incidents.
- Initial reports came from Arkansas, Missouri, Mississippi, and Tennessee, but recent reports have been expanding into more northern states (Iowa, Nebraska, and Kansas) as growing/use season proceeds.
 - So far, 157 reports have come in for Missouri, and well over 600 for Arkansas.
- In Missouri alone, damage has so far been reported on nearly 64,000 acres of soybeans, as well as on tomatoes, melons, grapes, peaches, pumpkins, organic crops, and residential gardens/ornamentals.
- Arkansas has banned Dicamba for the rest of the season using emergency rule authority
- Missouri, used FIFRA stop sale authority to ban Dicamba, but is now working with EPA to bring use back, with restrictions under FIFRA 24(c) authority.
- Tennessee has used emergency rule authority to restrict Dicamba uses

- Kansas issued a press release telling growers to exercise caution, but does not intend to ban use.
- Under section 24 of FIFRA, states may regulate pesticides more stringently than EPA provided that the states do not impose labeling or packaging requirements.
- Under FIFRA, any changes to the allowable conditions of use of a pesticide must generally be done through amending or canceling the relevant registrations
- Dialogue is continuing between the states and EPA and registrants and we are evaluating the appropriate course of action for each state and determining if federal action is needed.
- OICA did a compliance advisory reiterating the label rules for Dicamba

East Chicago

- The remediation of lead from the yards in Zones 2 and 3 continues. We will complete as many yards as possible during the construction season. The final yard remediation will be completed in 2018.
- Zone 1 is the site of the low income housing units as well as the Carrie Gosush School. While we began the remediation in Zone 1 by first working on the interior of the housing complex, the mayor of East Chicago then decided to close the housing complex.
 - It was a great disservice to the residents as they were mandatorily disbursed all over many different areas. EPA would have had the entire Zone 1 remediated by now had we not been deterred by the Mayor's action.
 - Now the East Chicago Housing Authority has decided to raze the entire complex. This will complicate matters even further.
 - EPA will not be able to remediate Zone 1 until the demolition is finished and will also have to monitor all of the tearing down and hauling away of the housing complex material. It is an unnecessary additional burden for East Chicago.
- EPA also received a petition from many concerned citizen groups asking EPA to invoke our authority under the Safe Drinking Water Act to basically take a number of steps to provide drinking water enhancement to the citizens.
 - This is the primary responsibility of the state. Our investigation reflects that the state has basically done everything that we were asked to do.
 - We have decided to hold the request in abeyance and are notifying the petitioners basically that their request is made moot but that we will continue to monitor.
- An additional issue on which we are engaged is the disposal of dredging material containing PCBs in a Corps of Engineers Confined Disposal Facility (CDF) in East Chicago.
- The Corps has been dredging the river for some time. In around 2012 a CDF was established on 162 acres of an old refinery site in East Chicago.
 - This was at one time a welcome thing – the CDF is quite elaborate in its set up and monitoring. It has been used continuously since being established.
 - Now, the Corps wants to place dredged material containing PCBs with concentrations of more than 50 ppm in the CDF. To do so, they must have our approval and the state's approval. This application has created a furor. I have instructed Region 7 not to approve the application. The state agrees and believes they have an alternative that will work. The wrong thing about this is that in my simple opinion the Corps is really entitled to the granting of the application. Seemingly they have done everything correctly. This is still a work in progress.
- On August 7, the Governor and Secretary Carson are touring the site. I am trying to be in attendance as well as I think we will receive blame if we are not there.

Superfund

- Administrator Pruitt introduced the Superfund Task Force Report on July 25.
- Immediately thirteen directives were given by the Administrator to be immediately implemented.
- Additionally, we are charged with execution thereof.
- On August 1, EPA will hold a meeting of the captains and the recommendation lead personnel. That will be our embarkation point for the execution of the remaining recommendations.

Gold King

- The previous administration failed those who suffered losses as a result of the Gold King Mine release. A new review is paramount to ensure that those who have in fact suffered losses have a fair opportunity to receive assistance.
- When I was appointed Administrator, I committed to review a decision by the previous administration regarding the Gold King Mine incident that left so many impacted people without any support or help from the federal government.
- In January 2017, EPA denied 79 administrative claims filed by farmers, ranchers, homeowners, businesses, employees, state and local governments, as well as other individuals seeking damages in connection with the Gold King Mine release.
- In February 2017, the State of Utah filed an administrative claim seeking \$1.9 billion. Utah's claim is still pending, as are all administrative claims that have been filed after Utah's.
- On July 5, 2017, EPA mailed letters to all claimants whose administrative claims had been denied (except for New Mexico and the Navajo Nation), notifying them that the Agency was reconsidering their claims and requesting that they submit additional documentation. We have begun receiving additional documentation and questions from some claimants. In addition, a number of the letters were returned as undeliverable.
- On July 6, 2017, EPA received 59 new administrative tort claims from the law firm Hueston Hennigan filed on behalf of individual members of the Navajo Nation. (Hueston Hennigan is also representing the Navajo Nation as a whole in the district court litigation.) In addition, the firm submitted three requests for reconsideration on behalf of claimants who were not previously represented and whose administrative claims had been denied.
- There are currently 69 administrative tort claims pending that have not received an initial determination, including Utah's. An additional 77 administrative tort claims are under reconsideration. (That number includes some claimants who filed lawsuits around the same time of the reconsideration, and we are uncertain whether those claims may still be reconsidered given the timing of the filing of the suits.)
- **Looking ahead:**
 - EPA has six months (until December) to act on claims under reconsideration. If EPA does not act on a claim, it may be deemed "constructively denied" and the claimant may choose to file suit. Ex. 5 - Attorney-Client Privilege
 - In general, the statute of limitations to file administrative tort claims with the Agency runs on **August 5, 2017**. Ex. 5 - Attorney-Client Privilege

CCR

- The CCR rule is estimated to cost power plants between \$500 and \$745 million/year
- We've developed draft guidance for the states on CCR that is currently under OMB review.
- Most of the CCR rule's compliance deadlines have already gone into effect, but the ones that have not (including groundwater monitoring) are pretty significant and I understand why you want to change them.
- I appreciate the concern that you don't want companies making investment decisions to prematurely close power plants if that can be avoided before state permit programs get up and running.
- I agree that regulation of coal ash is best left up to the states. We have been encouraging states not wait for EPA to finalize guidance and to work with us now to get the approval process underway.
- EPA is already working on a proposed rule to be released for comment this fall that would fix a number of the problems that have been identified with the rule. Changing the CCR rule, including the compliance deadlines, would need to meet the statutory requirements and go through notice and comment rulemaking.
- We are carefully reviewing our authority to extend the deadlines and want to make sure any changes to the CCR rule are durable and not going to be struck down by the court, which could put power plants and states in an even worse off place.